

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 25 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0260-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RALPH THOMAS JESSUP,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20084272

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Ralph Thomas Jessup

Tucson
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Ralph Jessup petitions this court for review of the trial court's summary denial of his petition for post-conviction relief brought pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Jessup was convicted after a jury trial of two counts of armed robbery, one count of aggravated robbery, four counts of aggravated assault, four counts of kidnapping, and one count of theft of a means of transportation. The trial court sentenced him to concurrent prison terms, the longest of which were twenty-one years. We affirmed his convictions and sentences on appeal. *State v. Jessup*, No. 2 CA-CR 2009-0262 (memorandum decision filed May 28, 2010).

¶3 Jessup filed a notice of post-conviction relief, and appointed counsel filed a notice pursuant to *Montgomery v. Sheldon*, 181 Ariz. 256, 889 P.2d 614 (1995), *overruled in part on other grounds by State v. Smith*, 184 Ariz. 456, 459, 910 P.2d 1, 4 (1996), stating she had found no cognizable Rule 32 claims to raise. Jessup filed a proper petition arguing his trial counsel had been ineffective in failing to: (1) move to suppress evidence obtained by a search warrant; (2) move to strike several purportedly biased jurors for cause; (3) object to the out-of-court and in-court identifications of him made by several witnesses; (4) object to the presence of victim/witnesses in the courtroom during the testimony of other victims; (5) request an evaluation of Jessup's competency to stand trial pursuant to Rule 11, Ariz. R. Crim. P.; (6) call an alibi witness; (7) investigate the existence of an alternative suspect identified by a witness; (9) cross-examine effectively and call corroborating witnesses; (10) object to allegedly perjured

testimony; (11) present evidence of Jessup's mental health at sentencing; and (12) adequately explore a plea bargain. Jessup also filed a supplement raising two additional claims of ineffective assistance of trial counsel, arguing that counsel had failed to object to the trial court's purported conflict of interest because a witness appeared as a defendant before the court in another case, and that counsel should have objected to the use of Jessup's prior convictions as impeachment evidence against him. The court summarily denied relief.

¶4 Jessup largely repeats on review the same claims he made below. For the bulk of those claims, he attempts to expand the arguments he made below in response to the trial court's determination that he had not supported or developed those claims adequately in his petition for post-conviction relief. We agree with the trial court that Jessup's presentation of his claims in his petition for post-conviction relief was largely cursory. Even if we found his arguments on review persuasive, Jessup's attempt to present these claims adequately for the first time on review comes too late. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain "issues . . . decided by the trial court"); *cf. State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues in petition for review that "have obviously never been presented to the trial court for its consideration"). The purpose of a petition for review is to allow this court to "review . . . the actions of the trial court," Ariz. R. Crim. P. 32.9(c), and for the petitioner to identify legal or factual errors made by that court, not to expand upon arguments made inadequately below. Jessup has identified no error in the court's summary denial of his petition. And based on our own review of Jessup's

arguments, we conclude it correctly rejected his claims in a thorough and well-reasoned minute entry; we therefore adopt the court’s ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has ruled correctly on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶5 In his petition for review, Jessup also reurges several claims made in a second supplement to his petition for post-conviction relief that he apparently had mailed less than a week before the trial court summarily denied his petition. Specifically, Jessup argued his trial counsel had been ineffective in failing to object to alleged misconduct by the state related to a witness’s testimony, object to the purportedly defective indictment, and properly cross-examine the state’s DNA¹ expert. The trial court did not consider any of the new claims enumerated in that second supplement. Jessup does not argue on review that the court was required to do so, and indeed it was not. *See* Ariz. R. Crim. P. 32.6(d) (“[N]o amendments [to a petition for post-conviction relief] shall be permitted except by leave of court upon a showing of good cause.”). Jessup did not request leave to file the supplement, nor did he provide any meritorious reason he should be permitted to do so; he stated only that his new arguments had been “inadvertently not contained in his” petition for post-conviction relief. *See id.* Accordingly, because those claims were not presented properly to the trial court, we do not address them on review. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii).

¹Deoxyribonucleic acid.

¶6

Although we grant review, we deny relief.

/s/ *Peter J. Eckerstrom*

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ *Joseph W. Howard*

JOSEPH W. HOWARD, Chief Judge

/s/ *J. William Brammer, Jr.*

J. WILLIAM BRAMMER, JR., Judge